

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411  
BOSTON MASSACHUSETTS 02108  
(617) 727-8352  
(800) 462-OCPF

MICHAEL J. SULLIVAN  
DIRECTOR

February 27, 1996  
AO-96-03

Rosemary Leary, Chairperson  
Amesbury Charter Commission  
Town Hall  
Friend Street  
Amesbury, MA 01913

Re: Distribution of Charter Commission Report

Dear Ms. Leary:

This letter is in response to your February 16, 1996 letter requesting an advisory opinion. You have asked if public funds may be used in connection with an upcoming ballot question regarding a proposed charter amendment.

Question: May public funds be used to print and distribute the Final Report ("Report") of the Amesbury Charter Commission ("Commission") to the voters of Amesbury?

Answer: Yes.

Facts: You have stated that the Amesbury Board of Selectmen ("Board"), on February 8, 1996 voted and authorized the Amesbury Charter Commission "to take over their responsibility of the printing and mailing the Commission's Report." Based upon your review of the law, you believe that public funds may be used to print and mail the Report. You have asked this office to confirm your understanding.

Discussion: The fundamental right to adopt, revise and amend city and town charters by the election of a charter commission is found in the Massachusetts Constitution. See M.G.L.A. Const. Amend. Art. 89, ss. 3 and 4.

In addition, chapter 43B of the general laws sets forth in detail the procedures that cities and towns must follow to adopt, revise or amend their charters. For example, M.G.L. c. 43B specifies how a charter commission is elected, the composition of its membership and the form of the ballot question. More particular to your question, section 11 of chapter 43B provides, in part, that:

The city council or board of selectmen shall cause the final report of a charter commission, or a charter amendment proposed in an order which has become effective under section ten, to be printed and a copy to be distributed to each residence of one of more registered voters (emphasis added).

For the purpose of this opinion, I assume that the Board's action on February 8, 1996 was intended to carry out their responsibilities under this provision of section 11.

It is this office's long standing opinion that public funds may not be used to promote, oppose or otherwise seek to influence a ballot question unless expressly authorized by statute. Moreover, even purely informational material may not be distributed unless expressly authorized by statute. See Anderson v. City of Boston, 376 Mass. 178 (1978). See also Joint Memorandum issued by the Secretary of State and OCPF dated January 14, 1994.

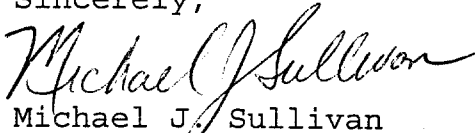
The language of section 11, however, not only authorizes the Board to "cause the final report" to be distributed to registered voters, it mandates such distribution. Moreover, even if there was a conflict between the provisions of the campaign finance law, M.G.L. c. 55, and the Home Rule Procedures law, M.G.L. c. 43B, the latter reconciles any conflict in favor of chapter 43B. See M.G.L. c. 43B, s. 17 which states that "provisions of this chapter shall prevail where they are in conflict with any applicable provisions of said chapters fifty to fifty-seven, inclusive."

For the above reasons, it is my opinion that the Amesbury Board of Selectman may authorize the use of public funds to prepare and distribute the Final Report of the Amesbury Charter Commission in accordance with the provisions of chapter 43B. You should note, however, that the campaign finance law does require the Board to file a report. Specifically, the law requires the town treasurer to file a report, CPF Form M22A, with the town clerk setting forth "the amount or value of every . . . expenditure . . . together with the date, purpose, and full name and address of the person to whom it was made." M.G.L. c. 55, s. 22A. The town treasurer should also reference the provisions of law authorizing the expenditures. For your information, I have enclosed a copy of CPF Form M22A.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

  
Michael J. Sullivan  
Director

Enclosure

cc: Town Treasurer & Clerk  
Town Manager  
Chair, Board of Selectmen